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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,120	03/11/2004	Graeme Scott Attey	D5053-00032	8243

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DUANE MORRIS LLP
IP DEPARTMENT
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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/799,120

Applicant(s)

ATTEY, GRAEME SCOTT

Examiner

Frank Vanaman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/25/06</u> . | 6) <input type="checkbox"/> Other: _____ |

Status of Application

1. Applicant's amendment and comments, submitted Sept. 13, 2005 and Dec. 27, 2005, have been entered in the application. Claims 12-29 are pending. Claims 1-11 have been canceled.

Information Disclosure Statement

2. Numerous references cited on the Information Disclosure Statement filed Jan 25, 2006 are duplicates of reference previously cited in the application, and have been lined-through as not considered as they were considered previously.

Applicant is invited to explain the redundant citations.

Claim Rejections 35 USC § 103

3. The portions of 35 USC 103 relied upon herein may be found cited in a previous office action.

4. Claims 12-16, 21-24 and 29 are rejected under 35 USC 103(a) as being unpatentable over by Krasnoff et al. (US 3,006,659, cited previously) in view of Andorsen et al. (US4,033,596, also cited previously). Krasnoff et al. teach a riding board adapted for use with both feet of a user, including a board member (60), front (34) and rear (42) wheels mounted for rotation about respective axles (figure 1: 32, 40) and further includes a brake which comprises a braking member (122) adapted for engagement with a lower portion of a user's leg, the brake for operating the rear, trailing, wheel; the member acting indirectly on the entire wheel, including its rim, to the breadth claimed, the member comprising an upstanding portion (122) and a pivot (proximate 124, 125), the member being biased away from the wheel (by spring 132) and the braking position, but which may be engaged in the braking position against the bias of the spring. The reference to Krasnoff et al. fails to teach that the brake device may be operated by pressure exerted by a calf of a user's leg. Andorsen et al. teach that it is very well known to employ a calf-engaging brake control (18, 23, 24, etc.), and it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the board taught by Krasnoff et al. with a calf-engaging brake mechanism as taught by Andorsen et al. for the purpose of allowing a user to brake the board without having to remove his or her foot from the board portion.

As regards claim 29, the reference to Krasnoff et al. as modified by Andorsen et al. fails to specifically teach the use of a disc brake. Disc brakes are exceptionally well known in the occupant-propelled vehicle arts, and it would have been obvious to one of ordinary skill in the art at the time of the invention to employ instead a disc brake with the board taught by Krasnoff et al. as modified by Andorsen et al. for the purpose of generating a greater braking force than may be had with a wheel-surface-engaging form of brake.

5. Claims 12-17, 19, 21-25, 27 and 29 are rejected under 35 USC 103(a) as being unpatentable over by Krasnoff et al. (US 3,006,659) in view of Rosso et al. (WO 00/53276). The reference to Krasnoff et al. is discussed in detail above and fails to teach that the brake device may be operated by pressure exerted by a calf of a user's leg, further including a cable arrangement connected with an upright plate forward of the member. Rosso et al. teach a riding board which comprises a brake adapted for engagement with a lower calf portion of a user's leg (36), the brake for operating on the rear, trailing, wheel; the member acting indirectly on the entire wheel, including its rim, to the breadth claimed, the member comprising an upstanding portion (36) and a pivot (junction of 44 and 37), the member being biased away from the wheel (48, 49), wherein the brake additionally includes an upright plate portion (top of 37) fixed to a board portion (24) and positioned forwardly of the braking member, a flexible cable means being fixed to the upstanding plate, the cable being operationally connected to the braking member so that movement of the braking member causes a braking force to be applied to the wheel. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the brake as taught by Rosso et al. on the board of Krasnoff et al. for the purpose of allowing flexibility in the mounting and location of the actuator (by use of a cable rather than a fixed linkage).

As regards claim 29, the reference to Krasnoff et al. as modified by Rosso et al. fails to specifically teach the use of a disc brake. Disc brakes are exceptionally well known in the occupant-propelled vehicle arts, and it would have been obvious to one of ordinary skill in the art at the time of the invention to employ instead a disc brake with the board taught by Krasnoff et al. as modified by Rosso et al. for the purpose of

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generating a greater braking force than may be had with a wheel surface-engaging brake.

6. Claims 18, 20, 26 and 28 are rejected under 35 USC 103(a) as being unpatentable over Krasnoff et al. in view of Rosso et al. and Gates (US 5,251,934). The reference to Krasnoff et al. as modified by Rosso et al. is discussed above and fails to teach the cable being connected to a brake device having opposed brake pad elements and moving arms, so connected with the brake member as to cause the brake pads to engage the wheel when the brake member is moved. Gates teaches a very well known cable braking arrangement wherein a cable (70, 60, 62) causes the operation of a first and second pair of movable arms (10, 42, 50) which engage brake pads (52) with a wheel portion to slow the wheel. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the brake actuator taught by Gates in place of the band brake taught by Krasnoff et al. as modified by Rosso et al. for the purpose of allowing the brakes to be made using commonly available caliper-style brake components, thus reducing manufacturing costs and allowing easier field replacements.

Response to Comments

7. Applicant's comments concerning the intended use of the Andorsen reference are noted. In this case, it is not entirely clear whether or not Andorsen is capable of performing the recited intended use. As such, the examiner has withdrawn the references as applied singly. Note that Krasnoff et al. teach a board which is capable of being ridden on by both feet of a user, for example when coasting. Applicant's comments concerning the appearance of the reference to Krasnoff et al. are noted, however they are not supported by a showing of facts. The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Note that Krasnoff et al.'s brake device, with the exception of the adaptability to engage a user's calf, satisfies the limitations as they are actually recited in the claims. As regards the reference to Gates, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the

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test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

8. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

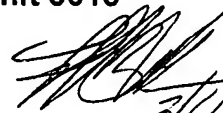
A response to this action should be mailed to:

Mail Stop _____
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

F. VANAMAN
Primary Examiner
Art Unit 3618


3/6/06